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10/730,744	12/08/2003	Bruce Wesson	P02258US (98525.1P3)	2669
22920 7590 09/30/2009 GARVEY SMITH NEHRBASS & NORTH, LLC LAKEWAY 3, SUITE 3290 3838 NORTH CAUSEWAY BLVD. METAIRIE, LA 70002				
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* BRUCE WESSON

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Appeal 2009-001007  
Application 10/730,744  
Technology Center 2800

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Decided: September 29, 2009

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Before ADRIENE LEPIANE HANLON, CHUNG K. PAK, and MARK  
NAGUMO, *Administrative Patent Judges*.

PAK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's decision finally rejecting claims 39 through 54 and 56 through 59, the only claims pending in the application (the Final Office Action mailed December 18, 2006). We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

#### STATEMENT OF THE CASE

The subject matter on appeal is directed to light emitting diode (LED) bulbs (Spec. 1, ll. 31-32). Details of the appealed subject matter are recited in representative claims 39 and 49 reproduced from the Claims Appendix to the Appeal Brief (“App. Br.”), filed July 19, 2007 as shown below:

39. An LED bulb adaptable to an application with a load/resistance to match impedance/resistance requirements of the application, the bulb including at least one LED and a load.

49. Apparatus comprising an LED bulb intended as a replacement bulb for a second bulb and built in or attachable load/resistance to match, mimic, or approximate the impedance/resistance of the second bulb, the apparatus including at least one LED and a load.

The Examiner relies on the following evidence to establish unpatentability of the claims on appeal (Examiner’s Answers (“Ans.”), mailed November 26, 2007):

Eggers	US 5,929,568	Jul. 27, 1999
Wesson	US 6,371,636 B1	Apr. 16, 2002

Appellant requests review of the following Examiner’s rejections (App. Br. 2):

1. Claims 39 through 54 under 35 U.S.C. § 102(b) as anticipated by the disclosure of Eggers; and

2. Claims 49 and 56 through 59 under nonstatutory obviousness-type double patenting as unpatentable over claims 1, 5, 9, 12, 14, and 16 of Wesson in view of the disclosure of Eggers.

Appellant traverses the Examiner's § 102(b) and non-statutory obviousness-type double patenting rejections, arguing only that Eggers does not teach a bulb having a circuit matching, mimicking or approximating the impedance/resistance requirement of an unknown application or a second bulb (App. Br. 3).

### ISSUE AND CONCLUSION

Has Appellant identified reversible error in the Examiner's finding that Eggers teaches an LED bulb with a load/resistance circuit matching or mimicking the impedance/resistance requirement of an unknown application or a second bulb?

On this record, we answer this question in the negative.

### FINDINGS OF FACT ("FF")

1. Eggers teaches "LED circuits for causing the luminance characteristics of a light emitting diode (LED) to match that of an incandescent bulb" (col. 1, ll. 6-8).
2. Eggers states that its Figures 1 and 2 show that LEDs and incandescent bulbs may have different luminance levels over a varying input current and voltage (col. 1, ll. 42-51).
3. Eggers teaches that "there are many uses in which it is desirable to replace an incandescent bulb with an LED of similar luminance" (col. 1, ll. 52-54).
4. Eggers teaches employing appropriate first and second resistors in its LED compensation circuits to provide the LED luminance that matches

the incandescent luminance at input voltage levels of 12 and 26.5 volts (col. 3, ll. 55-63).

5. Eggars teaches that “the luminance of the LEDs 22, 24,...may be best matched to that of an incandescent bulb by trimming or tuning the resistor values while monitoring the luminance of the LEDs 22, 24,...” (Ans. 4, ll. 60-64).

6. Eggers teaches (col. 6, ll. 8-21) that:

An incandescent luminance matching circuit formed in accordance with the present invention offers many advantages over the prior art. Most importantly, LEDs may be substituted for incandescent bulbs in applications that require LED luminance to be matched to incandescent luminance over a wide range of input voltages or currents. Additionally, an incandescent luminance matching circuit formed in accordance with the present invention provides for an LED light source that produces less heat, operates for a longer life, is less prone to failure in high vibration environments, and consumes less power when compared to an incandescent bulb. Because of these many advantages, LEDs may be really substituted for incandescent bulbs in many applications.

7. Appellant does not dispute the Examiner’s finding that Wesson claims “an LED bulb that is adapted for use in standard automotive bayonet type bulb sockets in a brake light mode and a tail light mode, and the bulb comprises [the] limitations in a manner claimed in claims 56-59.” (Compare Ans. 4 with Br. 3-4).

## PRINCIPLES OF LAW

Under 35 U.S.C. § 102(b), anticipation is established only if “each and every element as set forth in the claim is found, either expressly or inherently, described in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). As set forth by the court in *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772 (Fed. Cir. 1983), anticipation only requires that the claims “‘read on’ something disclosed in the reference.”

As stated by our reviewing court in *In re Braat*, 937 F.2d 589, 592 (Fed. Cir. 1991)(citation omitted):

Obviousness-type double patenting is a judicially created doctrine intended to prevent improper timewise extension of the patent right by prohibiting the issuance of claims in a second patent which are not “patentably distinct” from the claims of a first patent.

An obviousness-type double patenting analysis is analogous to an obviousness analysis under 35 U.S.C. § 103(a). *See Studiengesellschaft Kohle mbH v. N. Petrochemical Co.*, 784 F.2d 351, 355 (Fed. Cir. 1986); *In re Longi*, 759 F.2d 887, 892-93 (Fed. Cir. 1985).

Appellant bears the procedural burden of identifying harmful or reversible error in the Examiner’s rejections. *See, e.g., In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (“On appeal to the Board, an applicant can overcome a rejection by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness”) (citation and internal quote omitted).

### ANALYSIS

The plain language of the claims on appeal indicates that the claimed LED bulb has or is attached to a load/resistance circuit that matches or mimics the impedance/resistance requirement of an unknown application or a second bulb. The claims do not require that the claimed LED bulb with a load/resistance circuit match or mimic the impedance /resistance requirement of an incandescent bulb. Thus, the “second bulb” that is to be replaced can be a LED bulb.

Eggers teaches a LED light source that can be substituted for or that can replace an incandescent bulb, thus necessarily indicating that the LED light source is a LED light bulb that can be used in the place of the incandescent bulb. Although Eggers teaches employing a circuit providing appropriate resistance to match the LED luminance to the incandescent luminance at given input voltage levels as argued by Appellants, the claims on appeal read on an LED bulb intended as a replacement bulb for another LED bulb having the same impedance/resistance.

Accordingly, Appellant has not identified any harmful or reversible error in the Examiner’s finding that Eggers teaches an LED bulb with a load/resistance circuit matching or mimicking the impedance/resistance requirement of an unknown application or a second bulb.

**ORDER**

In view of the foregoing, the decision of the Examiner rejecting the claims on appeal is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

**AFFIRMED**

kmm

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